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No. _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1997

OFFICER JAMES F. PRICE,

Petitioner,

vs.

JUAN MALERBA, TULIA MALERBA and ANDREA MALERBA, *et al.*,

Respondents.

On Petition For Writ Of Certiorari
To The United States Court of Appeals
for the Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

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CONTENTS REPRODUCED FROM FURNISHED PRETYPED COPY.

QUESTIONS PRESENTED FOR REVIEW

1. In a civil rights action in which the plaintiff alleges a constitutional deprivation, as a result of false or misleading information in an affidavit, does the determination of qualified immunity require the court to employ the "corrected affidavit" analysis originated by this Court in *Franks v. Delaware* and adopted by all circuits?

2. Does the Ninth Circuit opinion in this case properly employ the "corrected affidavit" analysis?

3. Is the Ninth Circuit's opinion in this case in conflict with controlling authorities of the Ninth Circuit and all other circuits?

PARTIES TO THE PROCEEDING

Petitioner is Officer James F. Price, a Senior Deputy Sheriff for the County of San Bernardino, State of California.

Respondents are Juan Malerba, Tulia Malerba and Andrea Malerba.

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OPINIONS BELOW

The order and judgment of the District Court for the Central District of California, in favor of Petitioner, was entered on April 6, 1994. (See App. C herein). The unpublished opinion of the Ninth Circuit Court of Appeals reversing the District Court was entered on June 27,1997, and is reported at 116 F.3d 1486 (9th Cir. 1997). (App. A herein). The denial of Petitioner's request for rehearing was entered on August 26, 1997. (App. B herein).

JURISDICTION

The judgment of the Ninth Circuit Court of Appeals was entered on June 27, 1997. (App. A herein). The request for rehearing en banc was denied on August 6, 1997. (App. B herein). The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254 (1) and Article 2, Section 2, Clause 2, of the United States Constitution.

STATEMENT OF THE CASE

A. Summary of Facts

The petitioner in this matter, James F. Price, is a Senior Deputy Sheriff for the County of San Bernardino, in the State of California. In mid-1990, Deputy Price, along with other local law enforcement personnel, was assigned to a Federal Drug Enforcement Agency ("DEA") Joint Task Force surveillance investigation involving a multi-million dollar Columbian drug trafficking and money laundering

ring. After months of continuing police surveillance, Deputy Price prepared a search warrant affidavit based on all of the information collected by the various law enforcement officers.

The affidavit prepared by Price included six residential addresses revealed during the surveillance operation. One of these residential addresses was 6222 Sunnymeadow Lane, the address of the Malerba family, Respondents in this matter. The search warrant was executed on the Sunnymeadow Lane address on November 9, 1990. The search yielded no narcotics.

B. Procedural Events

The Malerba family subsequently brought suit under 42 U.S.C. § 1983 against the law enforcement officials involved in the search of their home and those who obtained the search warrant, claiming that the search warrant had been procured with intentionally or recklessly false statements or omissions and that the search itself was conducted in an unreasonable manner.

Prior to trial, Petitioner Price moved for summary judgment claiming qualified immunity for his role in procuring the search warrant. After an evidentiary hearing, the district court granted summary judgment in favor of Price on the basis of qualified immunity concluding that Price had conducted himself in an objectively reasonable manner.

The case proceeded to trial on the remaining issues relative to the manner of the search and all remaining law

enforcement officers were exonerated by a jury which found no constitutional violations.

Following trial, Respondents did not appeal the jury verdict, but did appeal the ruling by the district court granting summary judgment to Officer Price on the basis of qualified immunity.

The Ninth Circuit Court of Appeals, relying principally on *Greenstreet v. County of San Bernardino* , 41 F.3d 1306 (9th Cir. 1994) reversed, stating simply that "the affidavit" failed to establish probable cause and that Price was not entitled to qualified immunity. While the Ninth Circuit evidently engaged in some "reconstruction" of the affidavit, redacting some information and adding other information, the court neglected to conduct the accepted "corrected affidavit" analysis embraced by all circuits, failed to produce a "corrected affidavit" in accordance with controlling case law, and did so without reference to a single authority addressing this issue.

As a result, the Ninth Circuit's opinion remanding the case back to the district court fails to provide any guidance as to what qualified immunity issues remain for trial. Petitioner's request for rehearing en banc was nevertheless denied. Consequently, the district court has requested further briefing from the parties on the question of which factual and legal questions remain on the qualified immunity issue.

C. Factual Details

The record below established the following involvement of Price as well as the sum and substance of the information which led to the issuance of the search warrants.

On September 21, 1990, Price and the other task force members were summoned to DEA headquarters to attend a briefing regarding an ongoing DEA narcotics trafficking investigation. At the briefing, DEA agents advised that the focus of their investigation was a drug dealer named Jorge Alonso and that several weeks earlier, due to the assistance of a reliable informant, the DEA had seized over two million dollars in drug money connected to Alonso's operation. The DEA agents went on to relate that Alonso had been observed at a local residence located at 2851 Bedford Lane, in the City of Chino Hills, and that he was also known to be paying utility bills for several other local addresses. The task force members were directed to set up 24- hour surveillance of Alonso. (See Declaration of James Price, Appellant's E.R., p.26 ff)

Over the next month, surveillance was conducted by various task force members from several different law enforcement agencies. During the course of this surveillance, Alonso was observed conducting various drug and money transactions accompanied by female accomplices acting as couriers. On one occasion, the surveillance team observed the use of a female courier to make a "switch" of a briefcase behind a bank in Studio City. Later, another team observed the transfer of a purse between two females at a Charlie Brown's restaurant in the San Fernando Valley. (See Declaration of James Price, Appellant's E.R., page 27

ff.) At one point during the investigation, an informant notified the DEA of a $50,000 cash transfer in a plastic bag which was to take place at an Albertson's parking lot. Acting on this information, task force members then observed Alonso make the transfer at the indicated location, again to a female operative. (See Affidavit, App. D herein, page 41).

By November 9, 1990, the surveillance had revealed six residences having some connection with Alonso. On that date, Price, with the assistance of DEA agent Tom Shrettner, prepared an affidavit requesting search warrants for all six residences including plaintiffs'. Price and Shrettner then presented the affidavit to Superior Court Judge Kamansky who issued search warrants for all six locations. (See Declaration of James Price, Appellant's E.R., p.27)

The specific references in the affidavit to Plaintiff's residence on Sunny Meadow Lane can be summarized as follows:

In the early morning of September 26, 1990, one of the task force members observed Alonso and a female companion drive from the Bedford Lane location to 6222 Sunny Meadow Lane. The female was dropped off at this location. Several hours later, the same female accompanied Alonso to a meeting with another couple which took place in a parking area behind a bank on Ventura Boulevard. At this meeting, task force members observed conversations between the four individuals, and Alonso was seen transferring a red bag to one of the females.

On July 15, 1992 Petitioner Price moved for summary judgment seeking qualified immunity for his role in the procurement of the search warrant. On December 16, 1992, the district court held a hearing in order to elicit the testimony of Petitioner Price regarding the facts and circumstances surrounding his application for the warrant. (See Transcript of Proceeding December 16, 1992, Appellees' Excerpt of Record).

At the time of the evidentiary hearing in the district court, Price testified that the female transported by Alonso to 6222 Sunnymeadow Lane on the morning of September 26, was not the same female seen later that same day, but rather, was the same female dropped off by Alonso twice at that location and who had been observed on a total of three occasions during the surveillance operation. (Transcript of Proceeding. December 16, 1992, at page 51 and 43 respectively.)

On April 5, 1994, following this Court's final opinion in *ACT UP!/Portland v. Bagley*, 988 F.2d 868 (9th Cir. 1993), the district court granted Petitioner Price's motion for summary judgement, ruling that both the affidavit itself and the conduct of Price "met the objective reasonableness standard of Act Up." (See App. C herein)

On appeal, the Ninth Circuit reversed, holding simply that "the affidavit" failed to furnish probable cause for the search of the Sunnymeadow Lane location and that Price was not entitled to qualified immunity, without acknowledging that they had redacted crucial information from Price's affidavit. The Ninth Circuit, without any discussion or analysis, redacted that portion of the affidavit

which stated that the female seen transported by Alonso to the Sunnymeadow Lane address in the morning was the "same unidentified female" seen with Alonso later the same day. Yet, the Ninth Circuit failed to reconstruct the affidavit to include the very critical information elicited from Price at the hearing, that this female had been seen being dropped off by Alonso twice at the Sunnymeadow location and had been observed on a total of three occasions during the course of the surveillance operation.

REASONS FOR GRANTING THE WRIT

THE NINTH CIRCUIT'S OPINION IMPROPERLY DETERMINES THE QUALIFIED IMMUNITY ISSUE AND IN THE PROCESS IGNORES ALL "CORRECTED AFFIDAVIT" AUTHORITIES.

In *Franks v. Delaware*, 438 U.S. 154, 98 S.Ct. 2674 (1978), this Court established the principle that a criminal defendant may sometimes seek suppression of evidence gained by a search warrant where the search warrant was obtained by an affidavit containing intentionally or recklessly false statements. A criminal defendant is entitled to this so-called "Franks hearing" where he can make a substantial showing that there are intentionally or recklessly false statements in the affidavit and that with the redaction of such false or misleading statements there is no probable cause. *Franks* 438 U.S. at 171-172. This is the origin of the "corrected affidavit" approach which has been adopted by virtually all Circuits in the United States, including the Ninth Circuit, so as to determine whether an officer retains qualified immunity in those civil cases where a plaintiff alleges that an officer intentionally or recklessly included false or misleading information in the affidavit.

For example, the Ninth Circuit observed in *Liston v. County of Riverside*, 120 F.3d 965 (9th Cir. 1997), that they had earlier adopted the *Franks* approach in *Branch v. Tunnell*, 937 F. 2d 1382 (9th Cir. 1991) in the context of determining qualified immunity in a civil rights lawsuit:

> The *Franks* standard, although developed in a criminal context, `also defines the scope of qualified immunity in civil rights actions'" *Branch* at 1387 (quoting *Rivera v. United States*, 928 F.2d 592 (2d Cir. 1991).

Liston at 972.

In *Malley v. Briggs*, 475 U.S. 335, 106 S.Ct. 1092 (1986), a case not involving any claims of false or misleading statements in the affidavit, the Supreme Court declared that an officer is entitled to qualified immunity unless the affidavit "is so lacking in indicia of probable cause as to render official belief in its existence unreasonable." *Malley*, at 334-335. The question which did not present itself in *Malley*, was whether an affidavit is examined for indicia of probable cause after or before it is "corrected" for intentionally or recklessly false statements or omissions.

Courts in virtually all circuits have answered this question in the same manner, holding that in cases where it is claimed there is intentionally or recklessly false or misleading information in the warrant affidavit, and where the warrant would not have issued but for that information, the qualified immunity determination must be made after the affidavit is "corrected" so as to exclude false or misleading information and so as to include the facts omitted from the affidavit. The Second Circuit succinctly states this approach as follows:

> A plaintiff can demonstrate that right was violated where the officer ... "knowingly and intentionally, or with reckless disregard for the truth makes a false statement ..." or

> omitted material information, and that such false or omitted information was "necessary to the finding of probable cause" ... In reviewing such cases on qualified immunity motions, a court should put aside allegedly false material, supply any omitted information, and then determine whether the contents of the "corrected affidavit" would have supported a finding of probable cause.

Martinez v. City of Schenectady ,115 F.3d 111, 115 (2d Dist. 1997).

See also, Sherwood v. Mulvihill, 113 F. 3d 396, 400 (3d Cir. 1997) [holding the affidavit should be "reconstituted" and "rewritten" so as to reflect the correct state of affairs]; *Hutsell v. Sayre*, 5 F.3d 996 (6th Cir. 1993) [holding that facts known to officer but not in affidavit "bolster" probable cause]; *Haygood v. Johnson*, 70 F.3d 92 (11th Cir. 1995) [holding that facts and circumstances known to officer but not in affidavit support reasonableness of officer seeking warrant]; *Bagby v. Broadhaver* 98 F.3d 1096, 1099 (8th Cir. 1996) [holding that qualified immunity is not necessarily lost even if "corrected affidavit" lacks probable cause "because that rule may... fail to serve the qualified immunity rule of sparing all but the plainly incompetent."] ; *Smith v. Reddy*, 101 F.3d 351, 357 (4th Cir. 1996) [holding that even if affidavit was lacking, facts and circumstances known to officer make "clear that a reasonable officer could find probable cause"]; *Stewart v. Donges* ,915 F.2d 572 (10th Cir. 1990) [holding there may sometimes be triable issues of fact preventing assessment of a corrected affidavit]; *Lallemand v. University of Rhode Island* , 9 F.3d 214 (1st

Cir. 1993) [requiring plaintiff to show that a corrected affidavit would clearly lack probable cause].

Courts across all circuits have also followed the lead of *Franks* by holding that it "is only objectively unreasonable for a law enforcement officer to deliberately or recklessly misstate facts material to the probable cause determination." *Lombardi v. City of El Cajon*, 117 F.3d 1117 (9th Cir. 1997). Hence, there is no "correction" required and no deprivation of qualified immunity where the evidence is that an erroneous statement was negligently or innocently placed in an affidavit. *Kelly v. Curtis*, 21 F.3d 1544 (11th Cir. 1994) [citing to an earlier case holding that "the rule does not apply to negligent misrepresentations or omissions." *West Point-Pepperell v. Donovan*, 689 F.2d 950, 959 (11th Cir. 1982)]

In the present case, after submission of cross motions for summary judgment, the district court held a special hearing to determine if Price was entitled to qualified immunity. At that hearing Officer Price testified that it was "a poor choice of words" when he stated in his affidavit that it was the "same unidentified female" seen in the morning of the 26th as was seen in the afternoon of the 26th. On the basis of Price's testimony the district court found Price's conduct objectively reasonable and accorded him qualified immunity, thus negating any inference that Price made an erroneous statement intentionally or with reckless disregard for the truth.

The Ninth Circuit has previously held that a district court determination of whether a false statement within an affidavit is intentional or reckless is reviewed for "clear error." *United States v. Dozier*, 844 F.2d 701, 705 (9th Cir.

1988). Yet, in this case, the Ninth Circuit failed to even acknowledge the district court's finding on this point, let alone accord it any deference, as required by its own law.

Instead, without any reference whatsoever to whether Price's statement in the affidavit was made innocently, negligently, intentionally or recklessly, Price's statement was redacted from the affidavit without any discussion whatscever. Had the Ninth Circuit panel correctly followed prevailing law regarding a "corrected affidavit", or deferred to the finding of the district court on this point, the redaction would not have occurred since the evidence is that Price innocently or negligently placed this statement in the affidavit. Price would have been properly accorded qualified immunity on the basis of the affidavit he submitted, without this redaction.

Indeed, if the Ninth Circuit had found, contrary to findings of the district court, that there was some ambiguity about whether Price had negligently or recklessly placed this statement in his affidavit, it should have remanded back to the district court for further findings on this issue. Had the Ninth Circuit taken this approach, on remand, Price would have submitted a sworn declaration from Deputy Gail Marianes stating that she was the source of the statement that it was the "same unidentified female" seen in the morning and later in the same day, that she conveyed this conclusion to officer Price and it would have been obvious that officer Price reasonably placed this statement in his affidavit.

Thus, the Ninth Circuit not only improperly "corrected" Price's affidavit by redacting out a statement

without discussion or reference to any authority permitting such redaction, but it did so in violation of all authority requiring a clear showing that a false statement was made deliberately or recklessly. *See e.g. Liston, supra,* at 973 [holding that "plaintiff must make a `substantial showing' of deliberate falsehood or reckless disregard"] and *Allen v. Cunningham* , 51 F.3d 285 (10th Cir. 1995) [stating "In order to negate the finding of qualified immunity due to giving false information, Plaintiff must make a substantial showing of deliberate falsehood or reckless disregard for the truth." (emphasis supplied)

Furthermore, the Ninth Circuit failed to "correct" Price's affidavit by adding the additional information he provided at the qualified immunity hearing which indicated that at the time he drew up the affidavit he reasonably believed that the same unidentified female was seen twice going with Alonso to the Sunnymeadow address, and had been seen on a total of three occasions during the course of the surveillance.

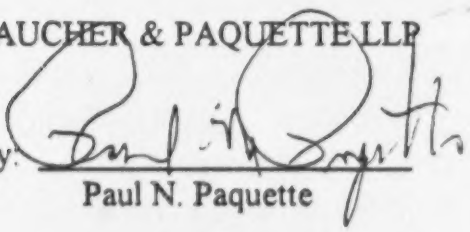
Without reference to any authority for redacting a critical statement Price reasonably placed in his affidavit, and without proper correction of the affidavit for facts Price honestly and reasonably believed at the time he drew up the affidavit, the Ninth Circuit was in no position to conclude that Price's affidavit, properly corrected, was "so lacking in indicia of probable cause as to render official belief in its existence unreasonable."

CONCLUSION

For the foregoing reasons, Petitioner respectfully submits that a Writ of Certiorari should be granted.

Respectfully submitted,

FAUCHER & PAQUETTE LLP



By: _____
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NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED
June 27, 1997
Cathy A. Catterson, Clerk
U.S. Court of Appeals

JUAN MALERBA; TULIA MALERBA; ANDREA MALERBA,

Plaintiffs-Appellants,

v.

SAN BERNARDINO COUNTY, a political subdivision of the State of California; OFFICER JAMES F. PRICE; DEPUTY G. MARIANES; DEPUTY SHARP; DEPUTY HAHN; DEPUTY MARNATI; OFFICER BATIX; OFFICER DUNN; DETECTIVE FAUSEM; DETECTIVE CRAWFORD; OFFICER ROSALES; OFFICER BECHMAN; OFFICER SERVANTES; OFFICER M. JONES; OFFICER FLAGG; OFFICER DEAVY; AGENT SCHRETTNER; AGENT CORDOVA; CITY OF RIVERSIDE, a political subdivision of the State of California; THE CITY OF CHINO, a political subdivision of the State of California,

Defendants-Appellees.

No. 95-56840
D.C. No. CV 91-01089-RG

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Richard A. Gadbois, Jr., District Judge, Presiding

Argued and Submitted May 7, 1997
Pasadena, California

Before: THOMPSON and T.G. NELSON, Circuit Judges,
and FITZGERALD, District Judge.**

Based on evidence obtained through a Drug Enforcement Agency (DEA) narcotics surveillance operation, San Bernardino County Sheriff's Department Senior Deputy James F. Price drafted an affidavit for a warrant to search the home of Juan, Tulia, and Andrea Malerba (the Malerbas). A Superior Court judge issued the warrant, and other police officers subsequently

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* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

** The Honorable James F. Fitzgerald, United States District Judge for the District of Alaska, sitting by designation.

searched the Malerbas' home. The Malerbas later sued Price under 42 U.S.C. § 1983, alleging that he violated their Fourth Amendment rights when he obtained the search warrant. The Malerbas also sued the officers who performed the search, alleging that those officers executed the warrant in an unreasonable manner.

The district court granted summary judgment in Price's favor on the issue of his qualified immunity, and a jury found against the Malerbas on their section 1983 claims against the remaining police officers. On appeal, the Malerbas challenge only district court's summary judgment on the ground of qualified immunity. We have jurisdiction under 28 U.S.C. § 1291, and we reverse.

DISCUSSION

To determine if an officer is entitled to qualified immunity from liability for a Fourth Amendment violation, a district court must determine: "1) was the law governing the officer's conduct clearly established? 2) Under that law, could a reasonable officer have believed the conduct was lawful?" Act Up!/Portland v. Bagley, 988 F.2d 868, 871 (9th Cir. 1993); see also Hunter v. Bryant, 502 U.S. 224, 227-28 (1992).

The law as of November 9, 1990, the date Price applied for the warrant, clearly established that he did not have probable cause to search the Malerbas' home. The Fourth Amendment requires "probable cause, supported by Oath or affirmation" to justify the issuance of a search warrant. U.S. Const. amend. IV. To obtain a warrant,

Price was required to establish "by sworn evidence presented to a magistrate that probable cause exists to believe that an offense has been committed and that items related to that offense, such as fruits of the crime, will be found on the premises sought to be searched at the time the warrant is issued." United States v. Rabe, 848 F.2d 994, 997 (9th Cir. 1988) (internal citation and quotations omitted).

The only evidence in Price's affidavit in support of the warrant connecting the Malerbas' home and Alonso's drug operation consisted of the following:

1. A police officer observed Alonso driving a woman from the Bedford Lane location to the Malerbas' home, on a maximum of two occasions.

2. The woman carried a purse.

3. Alonso's operation sometimes used female couriers to accomplish drug sales.

The woman was never otherwise seen by the surveilling officers, and she was not otherwise associated with Alonso.

In essence, Price's affidavit set forth that he suspected the woman of criminal activity because she was a woman who carried a purse and knew Alonso. However, most women carry purses. And, the woman's mere association with Alonso, a known criminal, does not give rise to probable cause to arrest or search her. See Ybarra v. Illinois, 444 U.S. 85, 91 (1979).

Even more attenuated is the connection to the Malerbas, however, because the woman only visited their house twice. The fact that the woman may have been a "casual social guest" of the Malerbas, or as it turned out, a maid, did not provide probable cause to search their home. See United States v. Bailey, 458 F.2d 408, 412 (9th Cir. 1972); United States v. Robertson, 833 F.2d 777, 783 (9th Cir. 1987) (mere proximity to criminal and house where criminal activity was suspected to be afoot was not enough for probable cause for arrest); United States v. Strickler, 490 F.2d 378, 380 (9th Cir. 1974) (mere proximity to a residence where cocaine is being delivered and participation in some ambiguous driving activity is not probable cause); Sibron v. New York, 392 U.S. 40, 62-63 (1968) (talking to a number of known narcotics addicts over a period of eight hours not enough for probable cause for arrest); Wayne R.Lafave, Search and Seizure, § 3.7(d) (observing that "mere suspicion that persons visiting the premises are connected with criminal activity" does not give law enforcement officers probable cause to search the premises).

Price is nevertheless entitled to qualified immunity unless a reasonable officer in Price's position "would have known that his affidavit failed to established probable cause and that he should not have applied for the warrant." Malley v. Briggs, 475 U.S. 335, 345 (1986).

The application of our holding in Greenstreet v. County of San Bernardino, 41 F.3d 1306 (9th Cir. 1994), controls this case. A reasonable officer in Price's position would not have applied for a warrant to search the Malerbas' home. As in Greenstreet, the only evidence linking the

Malerbas' home to any criminal activity was the presence of a person previously observed with a known criminal at a location suspected of being a drug-selling hub. See id. at 1307-08. The warrant contained no information about what the person did while she was at the Malerbas' home, or who actually lived in their home. See id. At 1309.

Price attempts to distinguish Greenstreet in several ways. First, he argues that, unlike in Greenstreet, here the police knew that Alonso accomplished his drug transactions through the use of female couriers. We reject this argument. The woman who was dropped off at the Malerbas' home was never observed doing anything illegal or drug-related. The woman's limited association with Alonso as set forth in the affidavit cannot give rise to a reasonable officer believing that there was probable cause to search the Malerbas' home. See Ybarra, 444 U.S. at 91.

Price next argues the present case is distinguishable from Greenstreet because in this case there was more DEA involvement in the investigation. This argument lacks merit. At the hearing conducted by the district court, Price admitted that, at the time he drafted the affidavit and to this day, the only information he possessed that linked the Malerbas' residence to Alonso's activities was that Alonso dropped off a woman there on two occasions. The DEA's involvement in the investigation could not have had any effect upon Price's decision to seek a warrant to search the Malerbas' home.

Last, Price attempts to distinguish Greenstreet by pointing out that the magistrate in the present case had more

time to consider the affidavit than did the magistrate in Greenstreet. However, Price cannot rely on the magistrate's acceptance of his affidavit to give him qualified immunity if a reasonable officer in his position would not have applied for a warrant in the first place. See Malley, 475 U.S. at 1098 (observing that, in our system, where magistrates work under docket pressures, an officer should minimize the danger of the magistrate issuing an unconstitutional warrant "by exercising reasonable professional judgment.").

We conclude that Price was not entitled to qualified immunity. We REVERSE the district court's summary judgment in favor of Price and REMAND to the district court for further proceedings consistent with this disposition.

REVERSED and REMANDED.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED
August 6, 1997
Cathy A. Catterson, Clerk
U.S. Court of Appeals

JUAN MALERBA; TULIA MALERBA; ANDREA MALERBA,

Plaintiffs-Appellants,

v.

SAN BERNARDINO COUNTY, a political subdivision of the State of California; OFFICER JAMES F. PRICE; DEPUTY G. MARIANES; DEPUTY SHARP; DEPUTY HAHN; DEPUTY MARNATI; OFFICER BATIX; OFFICER DUNN; DETECTIVE FAUSEM; DETECTIVE CRAWFORD; OFFICER ROSALES; OFFICER BECHMAN; OFFICER SERVANTES; OFFICER M. JONES; OFFICER FLAGG; OFFICER DEAVY; AGENT SCHRETTNER; AGENT CORDOVA; CITY OF RIVERSIDE, a political subdivision of the State of California; THE CITY OF CHINO, a political subdivision of the State of California,

Defendants-Appellees.

No. 95-56840
D.C. No. CV 91-01089-RG

ORDER

Before: THOMPSON and T.G. NELSON, Circuit Judges, and FITZGERALD, District Judge.*

The panel, as constituted above, has unanimously voted to deny the petition for rehearing. Judges Thompson and T.G. Nelson voted to reject the suggestion for rehearing en banc, and Judge Fitzgerald recommended rejection.

The suggestion for en banc rehearing has been circulated to the full court, and no judge of the court has requested a vote on the suggestion for rehearing en banc. Fed. R. App. P. 35(b).

The petition for rehearing is DENIED, and the suggestion for a rehearing en banc is REJECTED.

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* The Honorable James F. Fitzgerald, United States District Judge for the District of Alaska, sitting by designation.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

FILED
April 5, 1994
ENTERED
April 6, 1994
Clerk, U.S. District Court
Central District of California
By: _____Deputy

JUAN MALERBA; TULIA MALERBA;
ANDREA MALERBA,

Plaintiffs,

v.

COUNTY OF SAN BERNARDINO,

Defendants-Appellees.

D.C. No. CV 91-1089-RG (Bx)

ORDER ON CROSS-MOTIONS FOR SUMMARY JUDGMENT

THIS CONSTITUTES NOTICE OF ENTRY
AS REQUIRED BY FRCP, RULE 77(d).

This matter has stood submitted for some months. A substantial factor in the delay was the Court's view that, under the first version of ACT-UP Portland, it should take the testimony of Officer Price. Further delay was due to the necessity of obtaining a transcript.

The Court now rules as follows:

1. Crawford and Fausen are dismissed on concession of the plaintiffs.

2. It is adjudicated that Price is entitled to qualified immunity under the principles enunciated in Hunter v. Bryant, 502 U.S. ____, 112 S.Ct. 534 (1991), and its interpretation by the Ninth Circuit in ACT-UP!/ Portland v. Bagley, 971 F.2d 298, 301 (9th Cir. 1992). The Court finds that Price acted under the circumstances in an objectively reasonable fashion. The investigation involved a complicated conspiracy of many persons and numerous locations. The investigative team was made up of a number of persons from different agencies, and communication was certainly not perfect. The affidavit was less than perfect as well, but it met the objectively reasonable standard of ACT-UP. A judge signed the warrant based on that basis, and officers executing the warrant are entitled to the good faith protection of United States v. Leon, 468 U.S. 897, 920-923 (1984).

3. The motion of San Bernardino defendants for summary adjudication as to liability of Hahn, Sharp and Marianes, based on unlawful procurement of the warrant, is granted.

4. The motion for adjudication that Price, Hahn and Sharp cannot be liable for unreasonable execution of the warrant is granted. They weren't there.

5. There is no evidence to the effect that the County of San Bernardino can be held to Monell liability.

6. It would appear that the only remaining issue in this case is unreasonable conduct in executing the search warrant, which would include the knock-notice issue. Accordingly, all other defense motions are denied, and the matter will proceed to trial on that basis.

Further, counsel are to lodge a proposed stipulation calendaring the earliest agreeable trial date.

Dated: April 5, 1994

/s/
RICHARD A. GADBOIS, JR.
U.S. District Judge

IN THE SUPERIOR COURT DISTRICT,
CENTRAL DIVISION
COUNTY OF SAN BERNARDINO,
STATE OF CALIFORNIA

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO)

AFFIDAVIT IN SUPPORT OF SEARCH WARRANT

Personally appeared before me this 9th day of November, 1990,

James F. Price, Deputy Sheriff
San Bernardino County Sheriff's Department
Vice Narcotics Fencing Gang Division

who on oath makes complaint and deposes and says:
That the information contained in this Affidavit is for the purpose of securing a Search Warrant for the premises located at 13437 Gold Dust Way; 2267 Monte Claro Drive, 2851 Bedford Lane, Apartment 151; and 6222 Sunny Meadow Drive, Unincorporated area of China Hills, in the County of San Bernardino, State of California.

And 728 Pebble Beach Court, City of Upland, County of San Bernardino, State of California.

And 3633 Ponderosa, City of El Monte, County of Los Angeles, State of California.

And for any of the listed vehicles at any of the above listed addresses.

PREMISES TO BE SEARCHED:

The residence located at 13437 Gold Dust Way, in the Unincorporated area of China Hills, County of San Bernardino, State of California. The residence sits on the northeast corner of Maroon Bell and Gold Dust. It is a two story residence with dark brown trim and light brown stucco. It has a brown concrete shingle roof. The front door of the residence faces the southwest with the garage door facing west . Affixed on the fascia board just above the garage door are the numbers in gold 13437. On the south side of the residence is the front yard and the front yard is encompassed by an approximate three foot white in color wrought iron fence and the backyard appears to be encompassed by a five foot wood fence.

All rooms, attics, basements, cellars, safes, vaults and other parts therein, surrounding grounds, garage, storage rooms, vehicles and outbuildings of any kind located thereon.

The residence located at 2267 Monte Claro Drive, in the Unincorporated area of Chino Hills, County of San Bernardino, State of California. The residence is located on the west side of the street, five houses north of the intersection of Anchecer Drive and Monte Claro Drive. 2267 Monte Claro Drive is described as being a two story, white trim, white stucco structure on the west side of Monte Claro Avenue.

It has a reddish orange cement tile roof. It has a three car garage with the garage door facing east and the front door facing the southeast. On the fascia board that overhangs the sidewalk to the front door are the numerals 2267 in black, facing east. On the north side of the residence is a small block wall with a black wrought iron gate with what appears

to be a walk way that extends along the north side of the garage to the rear yard.

All rooms, attics, basements, cellars, safes, vaults, and other parts therein, surrounding grounds, garage, storage rooms, vehicles and outbuildings of any kind located thereon.

The residence located at 2851 Bedford Lane, Apartment 151, in the Unincorporated area of Chino Hills, in the County of San Bernardino, State of California. The apartment complex is called the Portofino Apartments, which are located in the south side of Bedford Lane, west of Peyton Avenue. Apartment #151 is located on the bottom floor with the front door facing the east. On the front door in a small plate, in white numerals with a black background are the numbers 151. There is no other apartment 151 in the apartment complex.

Included at 2851 Bedford Lane is a garage. On the garage door are the numbers 299 on the west side and 300 on the east side of the same garage door and it is a two car garage. The garage door itself is white in color and faces the south. The garage is connected to the same structure that Apartment #151 is connected to.

All rooms, attics, basements, cellars, safes, vaults, and other parts therein, surrounding grounds, garage, storage rooms, vehicles and outbuildings of any kind located thereon.

The residence located at 6222 Sunny Meadow, in the Unincorporated area of Chino Hills, County of San Bernardino, State of California, 6222 Sunny Meadow Drive is located on the northwest side of the street. It is described as being a two story residence with a brownish colored concrete shingle roof. The residence has a dark brown trim with a yellowish color stucco. The residence has a dark brown garage door and faces the southwest. Above the garage door in black numerals are the numbers 6222. The

residence front door faces the west and it is a double entry front door with wood grain in color. On the sidewalk which extends southwest from the front door are two, three foot brick pillars.

All rooms, attics, basements, cellars, safes, vaults, and other parts therein, surrounding grounds, garage, storage rooms, vehicles and outbuildings of any kind located thereon.

The residence located at 3633 Ponderosa Avenue, in the City of El Monte, County of Los Angeles, State of California. The residence is described as a two-story duplex located on the west side of the street. The duplex has a brown cement tile roof with beige stucco and white trim. The duplex has a two-car garage, with the numerous in black, "3633," affixed to the side of the garage. The garage door and front door faces the east. The residence is the last house on the west side of the street.

All rooms, attics, basements, cellars, safes, vaults, and other parts therein, surrounding grounds, garage, storage rooms, vehicles and outbuildings of any kind located thereon.

The residence located at 728 Pebble Beach Court, in the City of Upland, County of San Bernardino, State of California. The residence is a fourplex unit which has a brown cement tile roof, dark brown trim and light brown stucco. The garage door and front door of the residences faces the west. On the north side of the garage in black are the numerals "728." The residence is located on the east side of the cul-de-sac with no houses on the west side.

All rooms, attics, basements, cellars, safes, vaults, and other parts therein surrounding grounds, garage, storage rooms, vehicles and outbuildings of any kind located thereon.

The following vehicles in the County of San Bernardino, State of California. The vehicles are described as being:

A 1988 Ford Tempo, dark blue or black in color, CL# 2MBE868, Vin #1FAPP36X85K212947. The registered owner of the vehicle is a Avila, Regina, in care of Tina Ayala, P.O. Box 32433, Los Angeles, CA 90032.

A Silver 1987 Pontiac Grand Prix, CL# 2DQJ417, Vin #2G2AF51W9H9227566. The registered owner of the vehicle is Gutierrez, Hernan with an address of 10730 Long Beach Boulevard, Lynwood, CA 90262.

Gray or Silver in color 1988 Isuzu, CL# 2RYR647. The Vin # JABRT5177J7405971. The registered owner is Steve Jackson Company, 8306 Wilshire Boulevard, Beverly Hills, CA.

Bluish Silver 1990 Dodge Caravan, CL# 2RLR119. The Vin # 1B4FK44R8LX104930. The registered owner is a Serna, Orlando with an address of 1313 Grand Avenue, Walnut, CA 91786.

1986 White Chevy Celebrity, CL# 1JVK735. Vin # 1G1AW19W4G6269408, registered to a Arenas, Jorge of 1313 Grand Avenue, Walnut Grove, CA.

White 1988 Honda Accord, CL# 2FZX902, Vin # JHMCA5529JC016035, registered to Zapata, Carmen of 414 State College Boulevard, Suite C 337, Anaheim, CA 92806.

White Ford Probe, CL# 2LUS270, Vin # 1ZVBT20C2K5140804, registered to Suarez, Lilian F., 2341 Stormcroft Court, West Lake, CA 91361.

PROPERTY TO BE SEIZED:

The following items, which will document meetings, travel, telephone conversations, written communications and

electronic communications; financial transactions, including the acquisition of and transfer of wealth; and will document the manufacture, importation, distribution and sales of controlled substances by or among persons engaged in a conspiracy formed for the purpose of transporting, importing, distributing and selling controlled substances and for the purpose of disbursing wealth acquired from the illicit sales of controlled substances:

Personal papers, personal identification, passports or visas, photographs, school records and medical records, cancelled mail, written or electronic notations or communications, lease or rental agreements, mortgage documents, utilities subscriber documents or billings; all of which will establish the identity of the person or persons occupying the premises or who are in control of the premises, other rental or lease agreements or mortgage papers which document that the occupants of the premises exercise control over additional premises such as: residences, commercial properties and/or storage facilities and will further identify the person or persons in control of the premises;

Receipt of payment for travel expenses, including airline passenger and baggage tickets, aircraft rental, bus passenger and baggage fare, automobile rental agreements, gasoline credit card purchases, railroad passenger and baggage tickets, travel reservation documents, written communications from travel companies and/or agents, written notation documenting travel, computerized records of travel, credit card vouchers, cancelled checks, receipt of payment, traveler's checks or money orders made in the name of conveyance companies or to a travel agent;

Receipt of payment for lodging and/or meals, lodging reservation notices, written communications from lodging establishments or travel agents, brochures or other printed materials from lodging establishments or travel agents, maps or papers bearing directions to lodging establishments or to

meeting places, credit card vouchers, import, distribute or sell controlled substances and to disburse monies derived from the sales of controlled substances, photographs or electronic images which document the association of persons engaged in aforementioned conspiracy.

AFFIANT'S EXPERTISE:

Your Affiant has been a Deputy Sheriff for the County of San Bernardino since November 1, 1980. Since hired with the Sheriff's Office, I have been a K-9 Handler where I participated in a one hundred forty hour drug class. My dog was drug certified.

After certification, I have had to handle methamphetamine, cocaine, heroin and marijuana in order to train my dog. I had the dog for three and a half years.

During the three and a half years, I went to over fifty Search Warrants from the Sheriff's Office and adjoining agencies. In the Search Warrants, my dog has found numerous quantities of methamphetamine, heroin, marijuana and cocaine. Every year while having the dog, I had to be certified in the location and detection of each drug.

During the Search Warrants, I have collected the associated packaging and paraphernalia related to those narcotics. I have spoken to over fifteen different narcotic officers about the Search Warrants I have conducted. I have personally arrested ten subjects for possession of narcotics, primarily heroin and methamphetamine, and have seized paraphernalia and packaging for the material at these arrests. I personally made over fifteen Section 11550 of the Health and Safety Code, Under the influence, arrests for cocaine, methamphetamine and heroin, and I have seen the symptoms over seventy times by examining arrested subjects when I worked with trained narcotic officers when I worked the jail.

In the past year, I have been promoted to Detective and attached to the Vice Narcotics Fencing Gang Detail at the Sheriff's Office. Since I have been in the division, I have witnessed two subjects smoke rock cocaine, several subjects smoke methamphetamine, several subjects smoke marijuana and six subjects snort methamphetamine. I have also purchased on twenty-four different occasions methamphetamine and rock cocaine. I am aware of the packaging and paraphernalia attached to both drugs, and during undercover operations, I have participated in the packaging and selling of methamphetamine.

I have attended an eighty hour Drug Enforcement Administration, Narcotics Basic Officers Course required for the undercover officer on drug recognition.

PROBABLE CAUSE FOR ISSUANCE OF SEARCH WARRANT:

On 09/21/90 at approximately 1100 hours, while at the San Bernardino County Sheriff's Office, located at 655 E. 3rd Street, San Bernardino, CA., your Affiant met with the DEA Task Force and was advised of the following transactions that took place.

On 08/19/90, DEA Agents accompanied by the Ontario Police Department, acting on a reliable information provided by an anonymous caller, made a traffic stop on a Doge pickup, license 3P25448 on Mountain Avenue near the I-10 Freeway in the City of Montclair, CA. Upon stopping the pickup it was found to have a single occupant by the name of Julio Trana. Upon asking Julio Trana who the pickup belonged to, Julio refused any knowledge of who the pickup belonged to or what was inside the pickup. At this point agents asked Julio if they could search the pickup and Julio agreed. On searching the pickup, they found $2,244,168.00 in U.S. Currency. Upon checking the registered owner of

the pickup, it came back to a Oscar Quintero. Upon checking Oscar Quintero, he came back to a Oscar Quintero. Upon checking Oscar Quintero, he came up in the DEA Intelligence Computer NADDIS, as being a cocaine trafficker. Said caller subsequently came forward and provided the following information, i.e., that the individual that was controlling the transfer of seized moneys was a subject named Julio and that the seized money was being transported from 728 Pebble Beach Court, Upland, CA. Also, the caller (informant) had personally transported approximately one thousand kilograms of cocaine for Julio during the latter portion of 1989. Further, he/she had personally delivered the majority of the monies seized on August 19, 1990, to 728 Pebble Beach Court prior to that seizure.

A utility check and rental receipt was checked on Pebble Beach Court and it came back to a Roger Tyson, however, DEA and your affiant has not been able to find a Roger Tyson or able to find if a Roger Tyson exists.

DEA advised that on or about 08/27/90, Julio was arrested by LA Police Department for drunk driving in West Los Angeles. Upon being arrested, Julio gave the name of Alonso, Jorge with a date of birth of 06/09/51. He gave the address of 18722 Amar Road, Apartment #151, Walnut, California as his home address and a phone number of 465-9101 as a home phone number. Alonso was driving a silver 1990 Dodge Van, license number 2RLU119. DEA advised that their informant had all ready told them that the Dodge Van was a possible load vehicle and used in narcotic trafficking. Upon running the registered owner to theVan, it came back to Serna, Orlando. His address is 1313 N. Grand Avenue, Apartment 335, Walnut, California. Upon checking both Alonso's address and the Grand address, they both came back to a privately owned mail drop companies. While checking Alonso's phone number, DEA was able to come up with an address of 2851 Bedford Lane, Apartment

#151, Chino Hills, CA. On running a drivers license check on Jorge Alonso's DEA was able to get a drivers license photograph. The photograph was subsequently ran by the informant, who positively identified Jorge Alonso as being Julio and the major person involved in the transfer of the money.

On 09/20/90, DEA Agents observed Alonso with an unidentified female exiting from the apartment area of 2851 Bedford Lane, driving a 1987 silver Pontiac Grand Prix, California License 2DQJ417. The vehicle comes back to a registered owner of Gutierrez, Hernando, who resides at 10730 Long Beach Boulevard, Lynwood, CA. Upon a check of the address, it was found to be a Ray's Motors. Ray's Motors is a known dealer in narcotics and may also be a stash pad for Jorge Alonso. Hernando Gutierrez was found to possibly be a Columbian car salesman with prior arrests for narcotics back in 1987.

With all this information it was decided that we were going to set up a surveillance on the 2851 Bedford Lane address.

On 09/24/90 at approximately 0800 in the morning, a surveillance was set up comprised of DEA Agents and San Bernardino County Sheriff's Narcotics Officers on the address 2851 Bedford Lane, Apartment #151, Chino Hills, CA.

At approximately 0840 hours, Special Agent Schrettner advised of seeing Jorge Alonso arrive in a 1990 Dodge Caravan, California License 2RLU119 and park in a parking spot across from the entry way that leads into Apartment #151. On this same day, approximately 0900 hours, Alonso was seen exiting the apartment breezeway with the same unidentified female as he was seen prior to this date with. They both entered a silver Pontiac Grand Prix, California License 2DQJ417 and exited the complex.

On 09/25/90 at approximately 0800 hours Special Agent Schrettner observed Alonso to arrive at the 2851 Bedford Lane address, driving a 1988 black Ford Tempo, California License 2MBE868. A check was made of the license and the registered owner came back to a Regina Avala with a mail in care of Tina Ayala, P.O. Box 32433, Los Angeles, CA. Upon investigation, we were unable to identify either individuals on this registration.

Through surveillance, it was found that Jorge Alonso's actual sleeping place is a residence located at 2267 Monte Claro Drive, Chino Hills, California.

A utility check on the Monte Claro address and on the Bedford Lane address, reveals that Jorge Alonso pays the utilities on both residences. A long term surveillance has Alonso sleeping in Monte Claro and was observed leaving Monte Claro Drive, going to the Bedford Lane address where he would switch cars. This pattern appears consistent with narcotic traffickers, to which a trafficker refrains from doing business at their own residence, thereby doing the business at another location where they feel safe.

On 09/26/90 at 0902 hours, Sr. Deputy Marianes of the San Bernardino County Sheriff's Office watched Alonso and a unidentified female leave 2851 Bedford Lane and transported the female to 6222 Sunny Meadow Lane in Chino Hills, CA. Alonso dropped the female off at the address and returned back to Bedford Lane.

On 09/26/90 at 1330 hours, Alonso accompanied by the same unidentified female was followed by your affiant in the silver Pontiac Grand Prix, California License 2DQJ417 to Studio City where he was seen driving behind the Independence Bank and the Charlie's Restaurant located at 11000 Ventura Boulevard, Studio City, California. It was at this time that Sr. Deputy Sharp observed Alonso and the unidentified female have a meeting with another male and

female behind the bank. At this time Sr. Deputy Sharp observed Alonso to remove a red bag from the trunk of his vehicle and hand it to the female they met up with. They then had an approximate ten minute conversation with the new female and male, then Sr. Deputy Sharp observed the female and male leave in a 1987 Ford Probe, California License 2LUS270. The registered owner of the Probe came back to a Lillian F. Soares of 2341 Storm Croft Road, West Lake Village, California. Upon checking in the NIN System, (NIN System is a system of keeping track of individuals of narcotic related record or reputation). A check was made of the vehicle in the Los Angeles County area. The vehicle was found to be observed by LA DEA Office. The vehicle was being used by Joseph Soares and his wife Kimberly and believed to be involved in money laundering of cocaine and other narcotic related proceeds.

On 09/27/90 at approximately 1200 hours, your affiant received a message from a DEA Agent that a money transfer was going to take place in the parking lot of Alberton's located at the southwest corner of Grand and Peyton Avenue in Chino Hills, CA. The amount was going to be $10,000.00 and was going to be packaged in a manila envelope and the subject bringing the money was being surveilled from 728 Pebble Beach Court, Upland, CA.

The subject was driving a 1987 Gold Cutlass, California License 2CKD041. The subject's name was Guillermo Molina. At approximately 1340 hours, same date, Jorge Alonso was seen entering the parking lot of the Albertson's. Guillermo Molina had all ready arrived. Upon Alonso entering the parking lot he parked and Molina walked over to Alonso's car and entered it. While walking to the car Molino was carrying a manila envelope. After leaving the car, Molina had no envelope in his hands. Upon the end of the transaction, Alonso left the parking lot and was followed back to the Bedford Lane address.

It should be noted at this time that the location of the meet was extremely close the Monte Claro address and the Bedford Lane address.

At approximately 1410 hours, on 09/27/90, Alonso left the Bedford Lane address and headed eastbound on the 60 freeway, however, your affiant was unable to keep up with the surveillance due to the heavy traffic conditions. It was decided that Riverside Police Department, Detective Fouse would set up on 2851 Bedford Lane, Apartment #151 and wait for Alonso's return.

On 09/27/90, approximately 1915 hours, Alonso did return back to Bedford Lane, still driving the Pontiac. Detective Fouse watched Alonso unload several large suitcases, appearing to be quite heavy and take them into the apartment area. He then reappeared and entered the Pontiac and drove it to 2267 Monte Claro, where he was seen exiting the vehicle and getting into the silver Dodge Caravan, California License 2RLU119, where he was subsequently followed to Los Angeles International Airport, where he picked up two older subjects from the airport.

On 09/28/90, your affiant followed Alonso and the same unknown female to the area of the Galleria Mall in Sherman Oaks. While at the Galleria Mall they were observed by Sr. Deputy Sharp to make phone calls from McDonald Restaurant in the mall. From the Mall they were followed to a parking structure located behind Tony Roma's at 15760 Ventura Boulevard, Sherman Oaks, where they met up with the same female they met up with on 09/26/90 and she was driving the 1987 Ford Probate, California License 2LUS270. Jorge Alonso and what I believe to be his girlfriend or partner, then escorted a female into Tony Roma's Restaurant, where they were seen having a meal.

During the mean, Jorge Alonso's partner handed the new female her purse and the new female was seen looking in the

purse and then handing it back to Jorge Alonso's girlfriend. It was unknown if the female removed anything for the purse. The female after looking in the purse, handed the purse back to Alonso's girlfriend. Alonso, Alonso's girlfriend and the unknown female left the restaurant together.

On 10/03/90 approximately 1440 hours, your affiant was contacted by DEA and advised of another money transfer, consisting of $50,000.00.

The money transfer was going to take place in the Albertson's parking lot located in Chino Hills, CA., and that the money was coming from 728 Pebble Beach Court, Upland, CA. We were advised prior to the transaction that the money was going to be carried in a white plastic bag with multi colored squares on the bag. On 10/03/90 at approximately 1545 hours, Sr. Deputy Marnati observed Guillermo Molina arrive in his gold Oldsmobile, California License 2CKD041.

Approximately ten minutes later, Sr. Deputy Marnati advised of seeing Alonso arrive driving the black Tempo, California License 2NBE868 and park in the parking lot, two spaces down from Molina. Molina then exited his vehicle and met Alonso behind Alonso's vehicle, at which time Alonso walked over to the rear door, opened the rear door and Molina set the white plastic bag with the multi colored squares inside the back seat of Alonso's vehicle. A brief conversation took place, then Alonso returned back to Bedford Lane.

On 10/03/ 90, DEA advised your affiant that a new subject was coming in to the investigation, named Lucy Terado. Lucy Terado lives at 859 N. Mountain Avenue, Apartment #30F, Upland, CA. The information the DEA received, they believed that the $50,000.00 that was handed to Jorge Alonso earlier this date, was going to be given to Lucy

Terado on 10/04/90.

On 10/04/90, we set up surveillance at 859 N. Mountain Avenue, Apartment 30F, Upland, CA. At approximately 1200 hours, Sr. Deputy Marianes observed Lucy Terado, Marina Louse Suares and a small child come into the parking lot near apartment #30F. They were accompanied by a second subject by the name of Jimmy Restrepo.\. Upon entering the parking lot, Terado and Suares entered a white Ford Tempo, California License 2KIC399, which comes back registered to a Miramar Renta Car Company, 120 Wilshire Avenue, Santa Monica, California, and they watched and she saw Jimmy Restrepo enter a gray Isuzu, California License 2RYR647. The pair drove in tandem to the area of the Alpha Beta Shopping Center located in Chino Hills at the corner of Pipeline and Chino Hills Parkway. At approximately 1230 the same date, Terado, Restrepo and Suares were observed meeting in the parking lot with Jorge Alonso, who was accompanied by a Julia Trujillo.

At approximately 1240 hours, Detective Fouse of Riverside Police Department observed Jorge Alonso give the same bag, to which he could positively identify as being the money bag to Lucy Terado. Detective Fouse advises that he could see, due to his closeness, possible bundles of money inside the bag. Jimmy Restrepo\, after the transaction took place, gave the Isuzu to Moreno Suares and got in the vehicle with Lucy Terado. Attempts were made to follow Lucy Terado but was unsuccessful and she was lost in the area of Mission Viejo. Alonso was followed back to his apartment on Bedford Lane.

On 10/09/90, surveillance was set up on 859 N. Mountain Avenue, Apartment 30F, Upland, CA., where your affiant observed Jimmy Restrepo\ leaving from the Mountain address, driving the white Tempo 2KIC399. Your affiant followed Jimmy Restrepo\ to 728 Pebble Beach Court, Upland, Ca., where Restrepo\ picked up Nassly Fernandez.

Upon coming out to the vehicle, Nassly Feranndez was seen by Sr. Deputy Marnati, placing a box in the front seat of the Tempo. Fernandez and Restrepo then left the Pebble Beach address and were followed to Santa Ana, California, where they pulled into a post office located at 2230 Grand Avenue. Upon exiting their vehicle at Grand Avenue, they were both seen carrying boxes into the post office, one large and one small. Upon entering the post office, Sr. Deputy Hahn advised of seeing them addressing a small box approximately 8 inch by 8 inch by 8 inch and a large box approximately 16 inches by 16 inches by 16 inches and two letters and mailing them. Further investigation revealed that the small box was addressed from an N. Fernandez, 8216 34th Avenue, Apartment 3F, Jackson Heights, New York 11272 and it was addressed to a Denise Fernandez, 20355 Laguito, Cartagena Columbia. The large box, 16 inch by 16 inch by 16 inch, was from a Ramon D. Alvaraz of 8215 S.W. 152nd Street, #204F, Miami Florida 33193 and it was addressed to Inez Restrepo De Pelaez to the Urbanization Loyala Calle, Columbia, telephone number 269-3742. The letters were addressed from Penny Duque, 139 S. Main Street, Santa Ana, California 92707, addressed to a Margarita Terado AA81452 Envigaogadoant Meddlain, Columbia. The second letter was addressed from N. Fernandez, PO Box 2274, Santa Ana, California 92702, to a Claudia Echeverri of 8216 34th Avenue, 3F, Jackson Heights, New York 11372.

It should be noted that the address on one of the letters, 1239 S. Main Street, Santa Ana, California comes back to a Jewelry Shop where the owner is in Federal Prison at this time for narcotics related charges.

Once Fernandez and Restrepo was done at the post office, they were followed by your affiant to the Santa Ana DMV, located at First and Grand Avenue in Santa Ana, California.

One at the DMV, Detective Sharp observed Fernandez

applying for a California Drivers License and was assigned Drivers License number A8301861. Fernandez and Restrepo after completing business in the DMV, were followed to the Grauman's Chinese Theater off of Hollywood Boulevard in Hollywood, California where they abandoned the Ford Tempo in the parking lot of the Chinese Theater.

On the evening of 10/09/90, DEA Agents were contacted by their informant and advised that Jimmy Restrepo had discovered the surveillance and had abandoned the vehicle by orders of his superior at the Grauman's Chinese Parking Lot. Jorge Alonso had contacted Guillermo Molino meet him in the Albertson's Parking Lot where Jorge Alonso gave him the silver Dodge Caravan, license number 2RLU119. Alonso advised Moleno to drive the Caravan to the 728 Pebble Beach Court address and remove two boxes of money, containing approximately $715,000.00 and return to the Albertson's Parking Lot with the money.

Once Moleno returned to the Albertson's Parking Lot with the money, Alonso got in the van and took the Van to a unknown location (later found to be 2267 Monte Carlo). On 10/11/90, 728 Pebble Beach had been abandoned completely because the occupants feared police knowledge of the location.

10/11/90 at approximately 1730 hours, your affiant was contacted by DEA Agent Schrettner and Cordova and asked to meet them at 728 Pebble Beach. Upon arrival, your affiant was greeted by Schrettner and Cordova and advised that they were going to conduct a Consent Search of 728 Pebble Beach. While conducting the search, your affiant observed a hidden compartment inside the residence, located on the west wall of the Master Bedroom, with an entry into the compartment off the garage area. The compartment basically gave the appearance of a walled off closet area. The entry from the garage area was covered by a shelving

unit. On the back of the shelving unit there was nailed at approximately 3 foot by 3 foot piece of peg board placed on the back of the shelf, so when scooted up against the wall the entry hole was undetectable.

Once inside the compartment, it was observed that the bottom of the compartment was lined with coffee grounds, which narcotic traffickers use to mask any detection of narcotic odors emitting from the room. Inside the room was a box containing paraphernalia used in wrapping the money bundles and a money counter. The paraphernalia was consistent with the wrapping of U.S. Currency we had seen prior to this date. Photographs were taken of the room and the apartment area.

On 10/19/90 at approximately 1006 hours, while surveilling the address location at 859 N. Mountain Avenue, Apartment 30F, your affiant watched Lucy Terado and and Nassly Fernandez leave the area driving a white Honda, license 2FZX902. (The Honda comes back to a Carmen Zapata of 414 N. State College Boulevard, #C377, Anaheim, California.

Upon researching the address, it comes back to a mail drop box only.) Terado and Fernandez were subsequently followed to the Albertson's Parking lot where they met Jorge Alonso. Jorge was driving the gray Isuzu, license 2RYR647. Following a brief conversation between Lucy Terado and Jorge Alonso, Jorge handed Terado some paperwork. Terrado and Fernandez then was followed to the residence located at 13437 Gold Dust Avenue, Chino Hills, California. Terado was seen out of her vehicle inspecting the residence. At 1120 Terado and Nassly Fernandez were followed back to 859 N. Mountain, Apartment 30F, Upland, California where they entered the apartment. Again on 10/19/90 at approximately 1320 hours, Lucy Characo and Nassly Fernandez were followed from the apartment complex in the white Honda, California

License 2FX902 to the Consignment Furniture Shop located just north of the apartment complex in the Stater Bros. Parking lot.

The address is 1280 N. Mountain Avenue, Upland, California. Further investigation shows that while in the Furniture business, they purchased $2,181.00 worth of furniture and were going to have it delivered to 134377 Gold Dust Avenue, Chino Hills, CA. They purchased the furniture under the name of Rafael Rodas. The furniture was purchased with cash and the furniture was set up to be delivered on 10/23/90.

On the evening of 10/19/90, DEA was contacted by the informant and advised of a possible U.S. Currency transfer, taking place at the Albertson's parking lot in Chino Hills.

On 10/20/90 at approximatley 0910 hours, Sr. Deputy Hahn drove past the address located at 2267 Monte Claro. While driving past the address, he saw that the Dodge Caravan, license 2RL119 was parked in the garage area and next to the Caravan was a white Chevrolet Celebrity, license 2JVK735. He also observed Alonso getting into the Celebrity. Upon turning around, Detective Hahn observed the garage door was shut.

On 10/20/90 at approximately 1135, Special Agent Schrettner advised of seeing Guillermo Molina driving a 1986 gold Oldsmobile, license 2CKD041, leaving the parking lot of the Albertson's.

On 10/20/90 at approximately 1140, your affiant observed Guillermo Molina accompanied by Jimmy Restrepo, arrive at the Alpha Beta Parking lot located at the corner of Pipeline and Chino Hills Pkwy, Chino Hills, CA. Upon arrival, Molino and Restrepo were seen walking to the phone and placing several phone calls. At approximately 1220, Lucy Terado showed up in a white Honda, license 2FGX902 and

parked in the parking lot near Restrepo and Molina. Restrepo was seen by Sr. Deputy Marnati to be talking to Lucy Terado.

At approximately 1235 hours, Jorge Alonso showed up in the parking lot driving a silver Dodge Caravan, license 2RLU119. (The documented load vehicle)

I parked across the parking lot from Terado, Restrepo then entered, walked across the parking lot and entered the Dodge Caravan. Once inside the Van, he placed the front seat back in rest position, as to not be able to be seen from outside the Van and Jorge Alonso drove the Van off. Alonso and Restrepo were followed to 13437 Gold Dust Lane where they briefly parked in front of the residence. From there they were followed to a U-haul Rental yard located at 1355 Azusa Avenue, Azusa California, where they were out approximately 10 minutes. Upon returning to the van they were followed back to the 13437 Gold Dust Avenue, where they entered the residence and stayed approximately 15 minutes.

Once departing, Restrepo dropped Alonso off in the Alpha Beta parking lot where Alonso was seen being picked up by the white Chevrolet Celebrity, 2JVK735, which was driven by a unknown female. Restrepo was subsequently followed back to the El Monte area where he was lot.

On 10/23/90, your affiant was advised by the DEA that Nassly Fernandez and Jimmy Restrepo\ had moved into the residence located at 13437 Gold Dust Lane, Chino Hills, CA., and that the DEA's informant advised DEA that the Gold Dust house was going to be used as a stash pad. On 10/24/90, your affiant observed a garage door opener being installed at 13437 Gold Dust Avenue with Nassly Fernandez watching the installation.

It should be noted that every residence that the Alonso Organization has gone to has a garage door opener.

On or about 10/26/90, your affiant was advised by Sergeant Phillips of the San Bernardino County Sheriff's Office of watching Jimmy Restrepo purchase a JigSaw from the Home Club located at Upland, California.

From the information received, your affiant believes that this indicates that they may be building a new compartment similar to the compartment that was found in Pebble Beach and that they are building a compartment at the Gold Dust residence.

On 10/31/90, Jorge Alonso in the Isuzu, license 2RYR647 and the unidentified female that has been with them, possibly his girlfriend, was followed by your affiant from the Bedford Lane address to the area of Ardmore and Wilshire Boulevard in Los Angeles. Once in that area, Alonso was seen taking a white plastic sack out of the rear (same type of sack used as money transfer) and taking it into the area of the Molenium Investment Company, located at 3445 Wilshire Avenue, Suite 208, however, he was not seen entering that particular business. He stayed in the area approximately one and one-half hours and then was followed back to the Bedford address where he dropped the female off and then he was followed to the Monte Claro address, where he was seen parking inside his garage.

On 11/06/90, evidence was recovered during a search of trash discarded from the 2267 Monte Claro address and recovered from the public access located directly in front of the residence, which corroborated information received by the informant and the surveillance.

On 11/07/90, 1445 hours, Your Affiant was advised by Detective Fouse of the Riverside Police Department, Narcotics Division, that he had followed Jorge Alonso to the

area of Brea Canyon and the 60 Freeway where Jorge Alonso had met up with a subject driving a 1979 gray Pontiac, California license: 971XJO.

Detective Fouse advised Your Affiant that they had some conversation that when Alonso was leaving, he had taken a twelve inch by eighteen inch box that had a red top and brown sides and placed it by a tree located near the Burger King parking lot. Detective Fouse advised that he misinterpreted the size and type box it was and elected to follow Alonso away from Burger King. Detective Fouse further advised that when he realized the size of the box as advised by Detective Crawford, they returned and the box was gone as was the vehicle Alonso had met up with. A thorough check of the area was conducted, and they were unable to locate the box or anybody who had picked the box up.

At 1840 hours, same date, Riverside Police Department followed Jorge Alonso back to the Albertson's parking lot located directly across from the Burger King near the area of Brea Canyon Road and Colima, in the City of Walnut. At this time, Alonso was watched meeting a subject in a mini truck with yellow California plates on it. During the conversation with the subject in the mini truck, Alonso was seen placing a white bag in the rear of the mini truck. The mini truck drove away.

On 11/08/90 at approximately 10:00, Your Affiant followed Alonso from 2851 Bedford Lane, Apartment 151, to the area of Puente Avenue and Garvey Avenue, in Baldwin Park, where Your Affiant observed Alonso driving to the Vons parking lot located on the southeast corner of Puente Avenue and Garvey Avenue, in Baldwin Park. Alonso pulled up along front of the Vons Market where a Mexican male got into his vehicle. The Mexican male appeared to be in his early to mid twenties. Jorge Alonso drove the subject around the Diamond Bar area where they were seen getting

lunch at the Burger King located on Diamond Bar Boulevard, just south off Pathfinder Avenue, in the City of Diamond Bar. He was then followed back to the area of Baldwin Park where he was dropped off in front of the same Vons shopping center.

On the same date, 11/08/90, at approximately 1530 hours, Jorge Alonso was seen exiting the apartment with two females. Alonso and the females entered the Celebrity. We then followed the Celebrity to a commercial business located on San Jose Canyon Road and Grand Avenue, in the City of Walnut. It was found the commercial business was the Postal Plus. Next to the Postal Plus was a Mexican food restaurant and a small market. Alonso stayed there approximately ten minutes and was then followed to the area of San Bernardino Avenue and Azusa Avenue, in Covina, California, where he was seen leaving his vehicle and entering the Pak Mail Packing and Shipping Company, located at 527 West San Bernardino Avenue, Covina, California. While in the Pak Mail Company, Alonso was seen to have purchased what appeared to be folded up boxes. He then exited the company and placed the boxes in the trunk of his vehicle.

Jorge Alonso was subsequently followed to the East Los Angeles area where he was seen entering a check cashing business located in the Atlantic Square Plaza. Upon reading the front of the business, the business stated "Check Cashing/Mail Boxes." Alonso was seen entering the business where he was seen by Special Agent Schrettner handing a clerk what appeared to be United States currency.

On or about 2200 hours, same date, Jorge Alonso was followed home by Riverside Police Department. Detective Fause advised Your Affiant that upon arriving at the 2851 Bedford Lane address, he observed Alonso leaving his vehicle carrying a white plastic bag (conducive to the money bags that we have seen on prior occasions) and enter the

apartment. A short time later, Detective Fouse advised of seeing Alonso and the older female getting into the Celebrity and leaving the area. As Alonso was followed out of the area, Alonso became very evasive in his driving techniques, that being getting off the freeway, getting right back on, shutting his lights off, driving through residential areas, making several U-turns, to the point that Detective Fause could not follow Alonso anymore.

On 11/09/90 at approximately 1100 hours, Your Affiant was contacted by Special Agent Schrettner. Agent Schrettner advised Your Affiant that he was contacted several times by his reliable informant who was living at 3633 Ponderosa Avenue, El Monte, California. Special Agent Schrettner advised Your Affiant that he was advised that at 3633 Ponderosa Avenue, documents were held showing Alonso's conspiracy in his cocaine trafficking and that a special hidden compartment was constructed inside the residence to hold documents, United States currency and possibly cocaine.

It is in Your Affiant's opinion, based on Your Affiant's expertise which stem from schooling and past surveillance, that your Affiant believes that the above persons are engaged in a conspiracy for the purpose of transportation, importing, distributing and selling controlled substances and for the purpose of disbursing wealth acquired from the illicit sales of controlled substances.

AFFIDAVIT TO BE SEALED:

Due to the safety of the officers/informant involved in the undercover investigation, I request that the Affidavit be sealed until the close of the investigation.

STATUTORY GROUNDS:

All of the above information contained in his Affidavit for the Search Warrant gives Your Affiant probable cause to believe that an ongoing felony, a conspiracy formed for the purpose of transportation importing, distributing and selling controlled substances and for the purpose of dispersing wealth acquired from the illicit sales of controlled substances, is being committed in the County of San Bernardino, State of California.

And this complainant prays that a Search Warrant may be issued to search for the same and that the same may be brought before a magistrate and disposed of according to law.

/s/
James F. Price, Senior Deputy

Subscribed and sworn to before me this 9th day of November, 1990.

/s/
Judge of the Superior Court District
Central Division
County of San Bernardino
State of California